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ABSTRACT

The Swiss legal system has been openly protective of male privilege while the American system has traditionally claimed to support equality for all people. Yet the Swiss have succeeded in passing an equal rights amendment in a short time and with little national discord. Because of the nature of their political process, the Swiss were able to move much more quickly than the Americans. Amendments in that country are determined by popular vote, which in this case was held in 1981. Several other political and social factors facilitated passage of the amendment. Well-organized support geared the campaign to the mood of the nation. The amendment was promoted as a humanitarian move which insured human rights rather than womens' rights specifically. Supporters adopted a nonaggressive approach attuned to the traditional attitudes of the Swiss population. Moreover, all political parties, with the exception of the extreme right, supported the amendment. A final consideration concerns the design of the amendment, which calls for gradual social and political change after adoption. While the Swiss example cannot be considered a model for Americans, it does provide additional experience for Americans to contemplate as they reconsider their own proposal. (LP)

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THE SWISS EQUAL RIGHTS AMENDMENT: A CASE STUDY

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The Swiss Equal Rights Amendment: A Case Study

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Within one year, Switzerland passed and the United States defeated Constitutional amendments providing legal equality for men and women (Reference Note 1). With the American ERA once again introduced into the Congress (House of Representatives Bill 1, 1983), family scholars and family activists might profit from a study of the Swiss experience: How did the Swiss amendment become law and what impact has it had? Because of the similarities in the Swiss and American cultures, such a study should provide material for questioning and for analysis, but because of the differences in cultures and in situations the study cannot provide a model to be imported from one country into the other.

The senior author has been studying Swiss family law, and especially laws relating to women, for six years, culminating in 1982 interviews with the leaders of the Swiss equal rights campaign and with Swiss citizens--residents of a small French-speaking village in the canton of the Vaud--and with a collection and translation of pertinent scholarly, governmental, and journalistic materials. The findings of this investigation are reported below as (1) the events leading to the passage of the Swiss amendment, (2) the nature of the support and the opposition to the amendment, and (3) the evidence of impact of the equal rights law during its first year of existence.

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The Road to Passage

What makes the comparison of the careers of the Swiss and American equal rights amendments especially dramatic is that traditionally the American legal system has claimed to support equality for all citizens and the Swiss legal system has been openly protective of male privilege; still, it was the Swiss, not the Americans, who passed their amendment. How they did it is the main question this study attempted to answer.

Women received the right to vote in national elections in Switzerland in 1971 and still cannot vote in two of the cantons' elections. La Commission Fédérale Pour Les Questions Féminines (1980, 1982) found discriminatory laws in all major aspects of the Swiss federal legal structure--social security, taxation, military defense, penal code, etc. Seven articles in the Constitution and more than thirty articles in the Civil Code were thought by the Commission to discriminate against women. In recent years, the Swiss have been moving in the direction of equalization of some of these laws, as have all of the countries of Western Europe (Kerckhoff, 1981), but the Commission (1980) warns that the change will be slow and gradual.

Still, on the matter of a Constitutional amendment the Swiss moved much faster than the Americans could. In the USA, after 50 years of repeatedly asking Congress to take steps toward an equal rights amendment, the pro-ERA people were highly successful in 1971 and 1972: The House passed the proposed ERA 254 to 23 and the Senate 84 to 8. Within a year after Congressional action, 30 of the necessary 38 states had ratified the measure. But from then until the Constitutionally allotted time ran out on the attempt, June 30, 1982, the amendment was in the various state legislatures. American opinion polls show that had there been a popular vote on the issue, as there was in Switzerland, the amendment probably would have been passed.

The Swiss used about half of the amount of time the USA used to treat their similar amendment. A 1976 Congress which grew out of Switzerland's participation in the Interantional Year of the Woman, was called to discuss Swiss women's issues. The Congress recommended an equal rights amendment to the Constitution and also called for a Commission for Women's Issues, independent of government, but close to it, to keep watch on matters related to women. Within a few months women's organizations obtained the 50,000 signatures their petition for an equal rights amendment needed, obligating the Government to treat their proposal for an amendment within a three-year period.

After a set of hearings with cantonal, political, and civic leaders, the Federal Office of Justice decided to present the Government with a counter-proposal, a similar but different proposed equal rights amendment (Recapitulation des Résultats, 1978). This version of the amendment was then submitted to Parliament, which accepted it, and to the women's organizations which decided to support it rather than their own version. It was then ready for popular vote--a national referendum that was held on Sunday, June 14, 1981.

Support for the Amendment

In addition to having a political process which facilitated adoption of an equal rights amendment, the Swiss also had a well-organized team of amendment supporters. Werner Moser (1982), the Federal Office of Justice expert on Constitutional law who had been chosen to move the amendment through its various pre-referendum stages, said, "The organizations which supported the campaign to give women the vote ten years ago still existed, and they supported the (equal rights) amendment. Nearly all the political parties supported the amendment. The extreme Right people who opposed it were not very well known--not very effective."

In addition, the amendment supporters in Switzerland seemed almost always to appear to be fighting for justice and fairness and for humanitarian and democratic goals. With only isolated exceptions, the pro-amendment leadership projected the image of exponents of equal rights, not just of women's rights; of fairness, not feminism (Moser, 1982; Reusser, 1982). They were also almost always seen as rational, logical, polite, and non-aggressive, and Swiss informants suggested that such an appearance would be important in a Swiss campaign. Elizabeth Veya (1982), Secretary of the Federal Commission for Women's Issues, explained, "The atmosphere in Switzerland, even among women, is very traditional." Interviews in villages in Switzerland produced comments which implied a comparison with what the Swiss thought had happened elsewhere: "Shouting in the streets is not the way to get what you want." "If the women had rioted here the way they did in some countries, the amendment would never have passed." "The loud ones who are shouting for equal rights are the wrong ones to follow." These three citizens all favored the amendment. Some informants thought that this image projected by the pro-amendment forces helped explain why Swiss men, who have held on to special legal privileges, joined with the women to support the amendment (Reference Note 2).

Opposition to the Amendment

While the supporters of the amendment appeared to be well organized and to be fighters for such unassailable goals as human fairness, the opponents of the law also exhibited some characteristics which may in the long-run have helped its passage. The speed (five-year period) of the passage of the amendment may not have allowed the opposition the kind of organization and effective leadership the similar issue brought forth in the USA. Almost all informants noted that the various organizations of employers and of business and industry were the most important opposition to the amendment, and their

opposition seems to have been mild because of the difficulty they had in openly supporting a system of unequal pay for equal work (Wüthrich, 1982; Reis, 1980). "Of course," said Veya (1982), "Some of the employer organizations opposed the amendment. But not loudly. They knew that some change would have to come about." The business organizations implied that the amendment would drive them out of business, but they hesitated to say that the only way they could stay in business was to pay women less than men. Although no informant presented evidence to support the idea, several thought that the business organizations, unable to speak their fears outloud, "used" the more conservative amendment opponents as their "fronts". These conservative "people of traditional views", as the Swiss call them, argued that the amendment would have negative effects on family life and on the relationship of the sexes, but they did not voice the argument that it would drive companies out of business. Veya (1982) seems correct when she comments that these conservative spokespersons did not seem to have large organizations behind them: "The big thing is that the opposition was composed of individuals, not of organized pressure groups."

It was also characteristic of the anti-amendment people that they did not use arguments which might inflame feelings. None of the village respondents had heard it argued that passage of the equal rights amendment would force men and women to use the same public toilets. Ruth Reusser (1982), Chief of the Civil Code Section of the Federal Office of Justice, noted that the question of how the amendment would affect women's participation in the armed forces did arise; however, it was not an emotional issue, Reusser said, because most Swiss knew that some method of integrating women into national defence would have to be found whether there was an equal rights amendment or not. None of the respondents had heard the equal rights amendment linked to communism or accused of being supportive of unisex or homosexual lifestyles.

Veya (1982) claimed that she was unaware of any important argument against the amendment which was not focused on serious issues; there were no major "red herring" issues as far as she knew. Although there were statements of opposition by religious organizations, there was little actual campaigning against the amendment by these groups.

Another characteristic of some of the Swiss who opposed the amendment was that they did not fully take it seriously. In the village interviews many amendment opponents were found who had not thought it important enough to vote against it. Three of these said, "Why not give the ladies what they want? It's not so important." "The women's law? It won't change anything." "No, nothing will change." Analyses of the actual voting on the amendment also provide indications of indifference (Krebs, 1981; Universität Bern, 1981. And see Reference Note 2). Although the referendum was held on a Sunday to encourage voting, only 33.55 per cent of the voters actually voted. Of those, 60 per cent voted for the amendment.

The Road After Passage

To what extent have the hopes and fears regarding the Swiss equal rights amendment proved to be predictive? Only a very preliminary response can be provided because the Swiss Constitutional system is specifically designed to move slowly after the adoption of an amendment. Swiss federal laws are not subject to judicial review because the Swiss do not believe that the will of the people as expressed through their elected representatives should be countered by the will of a few judges. A Constitutional amendment in Switzerland, unlike its counterpart in the USA, is not seen as a mechanism for immediate court rulings against other (lower) contradictory laws. There has been no "flood" of court cases following adoption of the equal rights amendment, something that was predicted by some of the amendment's opponents, although two important cases were in the courts by July, 1982. Only one

aspect of the amendment--the insistance on equal pay for equal work--is directly actionable in courts. The rest of the law is seen as "programmatic", meaning that the government is obliged to build programs and infrastructures which will support the meaning of the amendment.

But to find that the Swiss equal rights amendment will produce change slowly does not mean that it is ineffective. "The new amendment was necessary and it will be used slowly to do away with some blatant inequalities," Lausanne social work executive and attorney Arlene Weingart (1982) believes. Veya (1982) thinks that passage will especially help the acceptance of a proposed new matrimonial law and will then facilitate passage of a new citizenship law; laws relating to marriage and to citizenship are often cited as among the most unfair to women in Switzerland. Reusser (1982) believes that the campaign for the new amendment has positively affected men's views of the women's movement.

Did companies go out of business because they had to start paying women the same as men? "Absolutely not!" says Reusser (1982). Has the new amendment negatively affected family life and the relationship between the sexes? No one has any evidence of impact, for good or bad yet, and these more interesting questions will have to be answered by later research (Held & Levy, 1974).

Conclusions

What at first view seems to be a cultural contradiction, namely that a traditionally male-privileged legal system absorbed an equal rights Constitutional amendment, becomes more believable as we note the success the pro-amendment forces had in projecting an image of commitment to such universal values as fairness; and as we find the process of amendment adoption favoring those who were already organized to support it; and, finally, as we note the opposition to the amendment not putting into the battle all of the enthusiasm, commitment, and emotional appeal available to them. These observations are

useful in providing hypotheses for explaining how the Swiss experience lead to passage of an equal rights amendment, which was the major purpose of the study. As noted earlier, they do not provide Americans with a model of what can be done in this country; cross-cultural data are almost never that applicable to "foreign" cultures. But they do provide additional experience for Americans to contemplate as they prepare once again to debate their own proposed equal rights amendment.

REFERENCE NOTES

1. Article 4 of the Constitution fédérale de la Confédération süisse, official version:

> Tous les Suisses sont égaux devant la loi. Il n'y a en Suisse ni sujets, ni privilèges de lieu, de naissance, de personnes ou de families. L'homme et la femme sont égaux en droits. La loi pourvoit à l'égalité, en particulier dans les domaines de la famille, de l'instruction et du travail. Les hommes et les femmes ont droit à un salaire égal pour un travail de valeur égale.
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> Art. 4
>
> All Swiss are equal before the law. In Switzerland there are no subordinates, no special privileges of location, of birth, of person or of family. Men and women have equal rights. The law guarantees their equal rights, particularly in the realms of the family, education, and work. Men and women are entitled to equal pay for work of equal value. (Unofficial translation by the author, based on Siegenthaler, et al., 1977.)
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> For comparative purposes, the proposed US Amendment reads:
> Sec. 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
> Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
> Sec. 3. This amendment shall take effect two years after the date of ratification.

REFERENCE NOTES (continued)

2. Due to an agreement reached between the Government and the women's organizations at the time of the adoption of national suffrage for women, 1971, no official attempt is made to determine how many women vote on a national issue, or which option they favor (Reusser, 1982). However, sociological studies indicate that in those cantons where men had favored women's suffrage in 1971 they favored the equal rights amendment in 1981 (Krebs, 1981) but that women, who usually cast about 12 per cent fewer votes than men, showed up at the equal rights referendum vote in a force only five per cent fewer than men (Universität Bern, 1981). Krebs (1981) found a clear picture of equal rights amendment support coming from people in large urban areas and from the smaller and more wealthy families. The Universität Bern (1981) study showed that three-fourths of the married voters knew how their spouses would vote on the amendment before the referendum, and 87 per cent knew how the spouse did vote after the referendum; married couples tended to vote the same way. Earlier studies (Eidgenössischen Kommission, 1981) had noted that age and income were more important variables separating the opinions of Swiss on equality questions than was sex.

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Translations from French into English were by Jacqueline Aprilé.

Translations from German into English were by Gabriele Rother.